IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13929 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

JAYANTILAL P. CHAUHAN & 2 - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

None for Respondent No(s).: 2,3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

Rule. In this petition under Article 226/227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award dated 10th January 2005 passed by the Labour Court, Jamnagar, in Reference (LCJ) No.72/2004 by which the

Labour Court, Jamnagar, has partly allowed the said Reference quashing and setting aside the order of dismissal passed by the Disciplinary Authority and substituting the same with withholding of 2 increments with temporary effect and to pay 40% of the wages on substituting the order of punishment, however with continuity of service.

2. The respondent workman was serving as 'Conductor' with the petitioner Corporation. A departmental inquiry was initiated against him alleging inter alia that while he was on duty on 26.11.1993 the bus was checked by the Checking Squad and it was found that though he had collected fare from six passengers he had not issued the tickets. It appears from the record that the charge of misconduct was admitted by him before the Enquiry Officer. That thereafter show cause notice was served upon the respondent workman along with the copy of the Enquiry Report. However, the respondent-workman did not submit any Reply to the show cause notice and thereafter by order dated 15.11.1994 the Disciplinary Authority dismissed the respondent No.1 from services. It appears from the record that thereafter the respondent workman approached the Civil Court, Gondal, by way of Regular Civil Suit No. 344 of 1994 challenging the order of dismissal and obtained temporary injunction. It appears from the record that the said suit came to be dismissed for default on 28.11.1997 but the respondent workman did not inform the petitioner Corporation and according

to the Corporation they came to know about the suit being dismissed for default only on 31.12.2003 when the panel advocate appearing on behalf of the Corporation informed the Corporation with regard to the suit being dismissed for default and thereafter by order dated 17th January 2004 the order of dismissal came to be implemented and acted upon. The respondent workman raised an industrial dispute challenging his dismissal and prayed for reinstatement to his original-post and the said dispute was referred to the Labour Court, Jamnagar, for adjudication being Reference (LCA) No. 72/2004. The Labour Court, Jamnagar, held that it is proved that the respondent workman had not issued the tickets to six passengers, however the distance between the place from where the bus was started and the place of checking was 1½ km., only and the respondent workman might have issued the tickets to the said passengers and therefore it is held that the intention of the workman was not to misappropriate the amount and the respondent workman ought to have first issued the tickets, closed the way-bill and thereafter would have allowed the bus to proceed further and therefore by holding that he has committed breach of the Rules and considering that his past record is good and this seems to be his first misconduct the Labour Court exercising powers under Section 11-A of The Industrial Disputes Act, 1947 interfered with the order of punishment imposed by the Disciplinary Authority by further holding that the said punishment is too harsh, imposed punishment

of withholding of 2 increments without permanent future effect and directed to pay 40% of the salary however with continuity of service. Being aggrieved and dissatisfied with the judgment and award dated 10th January 2005 passed by the Labour Court, Jamnagar, in Reference (LCJ) No. 72/2004, the petitioner has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

5. Shri Hardik Raval, learned advocate appearing for the petitioner has submitted that the Labour Court has committed an error in holding that it was only the breach of rule of not issuing the tickets and not closing the way-bill before the bus has started. It is also further submitted that in fact the respondent workman has admitted the charge before the departmental enquiry meaning thereby he has admitted that he had not issued the tickets though the fare was collected and therefore the Labour Court was not justified in interfering with the order of punishment imposed by the Disciplinary Authority. It is also further submitted that it appears from the judgment and award that the Labour Court has interfered with the order considering the fact that it is his first misconduct and his past record is good. However, in fact there were 31 misconducts against him in the past,but due to negligence on the part of the concerned officer of the Corporation the same was not brought to the

notice of the Labour Court and now that the same is produced by the petitioner in the present Special Civil Application at Annexure “B” and therefore it is requested to consider the same and quash and set aside the order passed by the Labour Court. It is also further submitted by him that the order of dismissal came to be passed in 1994 and the respondent workman challenged the same before the Regular Civil Court, Gondal, being Civil Suit No. 344 of 1994 and obtained temporary injunction which came to be dismissed for default in the year 1997 and the respondent No.1 did not inform the petitoner with regard to the same, and inspite of the suit being dismissed for default he continued to be in service which shows malafide intention on the part of the respondent workman and this conduct is also not considered by the Labour Court and therefore it is requested to allow the present Special Civil Application. Shri Raval has also submitted that a departmental enquiry is also proposed against the erring officer who did not produce the default card of the respondent workman as it is prima facie found that the concerned officer was negligent and responsible for not producing the default card.

6. Shri JS Brahmbhatt, learned advocate appears on behalf of respondent workman and has supported the judgment and award passed by the Labour. It is submitted that the default card is not produced before the Labour Court and therefore the same cannot

be considered in this petition under Article 226/227 of the Constitution of India and the same cannot be relied upon by the petitioner. It is also further submitted that on appreciation of evidence the Labour Court has come to the conclusion that the punishment of dismissal imposed by the disciplinary authority is too harsh and thereafter has exercised the jurisdiciton and powers under Section 11-A of the I.D. Act and therefore the same is not required to be interfered with by this Court exercising the power under Article 226/227 of the Constitution of India. It is therefore requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing for the parties. It is not in dispute that the charge of not issuing tickets to six passengers has been admitted by the respondent workman before the Enquiry Officer and on that basis the Enquiry Officer has held the charge and misconduct proved against the respondent workman. The Labour Court, therefore, was not justified in holding that the findings are perverse and that charge of misappropriation, i.e., not issuing the tickets though fare was collected has not been proved. Assuming that the charge of misappropriation is not proved, in that case also the charge of not issuing the tickets to six passengers which is also proved is a serious conduct, as held by the Hon'ble Supreme Court in the case of Regional Manager, GSRTC, Vs. Ghanshyam Sharma reported in (2002)

10 SCC Page 530 wherein the Hon'ble Supreme Court has confirmed the order of dismissal of the conductor who had not issued tickets to passengers by holding that not issuing the tickets to the passengers is not only causing monetary loss to the Corporation but it is a loss of confidence reposed in a conductor and when a conductor who is having the post of trust of confidence is indulged in to such type of activity then the order of dismissal is justified. Even otherwise it appears from the judgment and award that the Labour Court has interfered with the order of punishment exercising power under Section 11-A of the I.D. Act by considering the fact that there is no past misconduct of the respondent workman and that it was his first misconduct. However, considering the default card produced along with the present Special Civil Application at Annexure 'B' to the petition it appears that there are 31 misconducts and defaults against the respondent workman and therefore it cannot be said that there was no past misconduct on the part of the respondent workman and that it was his first misconduct. It is true, that the said default card was not produced before the Labour Court. However, merely because some officer for whatever be the reason did not produce the default card, the said benefit cannot go to the workman against whom there were 31 defaults in the past.

8. Under the circumstances, the matter is required to be remanded to the Labour Court for deciding the Reference afresh. It is also required to be noted that the Labour Court has also not

considered the conduct on the part of the respondent workman of filing the suit challenging his dismissal and obtaining ex-parte interim injunction in the suit which came to be dismissed for default in the year 1997, and in not informing the petitioner Corporation with regard to the same, and inspite of the fact that the ex-parte injunction was vacated in 1997 on suit being dismissed for default in 1997, the respondent workman continued upto 2004 and all these facts had not been considered by the Labour Court, which prima facie, goes to show that the respondent workman is not entitled to any relief.

8.1. The matter is remanded to the Labour Court for considering the entire matter afresh keeping in view the observations made hereinabove. The petitioner Corporation shall pay an amount of Rs. 6000/= to the respondent workman by way of costs for not producing the default card before the Labour Court due to which now the matter is remanded to the Labour Court, with a direction that the petitioner Corporation must recover the said cost from the erring Officer by holding departmental enquiry over and above the punishment that may be imposed against the erring officer and a Report to that effect be made to this Court. Enquiry to be initiated be completed within 3 months from today.

9. For the reasons stated above, the petition

partly succeeds. The judgment and award passed by the Labour Court, Jamnagar, in Reference (LCJ) No. 72/2004 is hereby quashed and set aside. The matter is remanded to the Labour Court and the said exercise be done within a period of six months from the date of receipt of this order. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

RMR.